

Steven Ramsey v. Jay Cashman, Inc.  
Deposition of ARTHUR C. SARGENT - March 16, 2006

1	VOLUME: I	1	APPEARANCES OF COUNSEL:	2
2	PAGES: 1-102	2		
3	EXHIBITS: See Index	3	<u>For the Plaintiff:</u>	
4	UNITED STATES DISTRICT COURT	4	BARISH ROSENTHAL	
5	Civil Action No. 04-CV-10699 (RCL)	5	Three Parkway, Suite 1320	
6	-----	6	1601 Cherry Street	
7	STEVEN RAMSEY	7	Philadelphia, Pennsylvania 19102	
8	Plaintiff,	8	BY: SAMUEL J. ROSENTHAL, ESQUIRE	
9	v.	9		
10	JAY CASHMAN, INC.	10		
11	Defendant.	11	<u>For the Defendant:</u>	
12		12	HOLBROOK & MURPHY	
13	DEPOSITION of ARTHUR C. SARGENT, taken	13	15 Broad Street, Suite 900	
14	pursuant to the Massachusetts Rules of Civil	14	Boston, Massachusetts 02109	
15	Procedure, before Elizabeth A. Hayes, a	15	BY: ROBERT J. MURPHY, JR., ESQUIRE	
16	Professional Court Reporter and Notary Public	16		
17	in and for the Commonwealth of Massachusetts,	17		
18	held at the law offices of Holbrook & Murphy,	18		
19	15 Broad Street, Boston, Massachusetts, on	19		
20	Thursday, March 16, 2006, commencing at 9:15	20		
21	a.m.	21		
22	-----	22		
23	REPORTERS, INC.	23		
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2	<u>Testimony of:</u>		<u>S T I P U L A T I O N S</u>	
3				
4	ARTHUR C. SARGENT		It is hereby stipulated and	
5	Examination by MR. MURPHY	5	agreed by and between counsel for the	
6	Examination by MR. ROSENTHAL	82	respective parties that all objections,	
7	Examination by MR. MURPHY	88	except as to form, and motions to strike	
8	Examination by MR. ROSENTHAL	97	will be reserved until the time of trial	
9	Examination by MR. MURPHY	98	or pre-trial hearing.	
10			It is further agreed that the	
11			witness will read and sign the deposition	
12	<u>INDEX OF EXHIBITS</u>		transcript, under the pains and penalties	
13			of perjury, within 30 days of receipt of	
14	<u>NO.</u> <u>DESCRIPTION</u> <u>PAGE</u>		the deposition transcript; otherwise the	
15			deposition transcript will be deemed	
16	1      Fax cover sheet; report dated		signed.	
17	2/15/05; fax transaction report;		ARTHUR C. SARGENT, first having	
18	two-page C.V.; and eight pages		been satisfactorily identified by the	
19	of appendices.	4	production of his driver's license, and	
20			duly sworn, testifies as follows:	
21				
22			(Exhibit No. 1, Fax cover	
23			sheet; report dated 2/15/05; fax	
24			transaction report; two-page C.V.;	
			and eight pages of appendices,	

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<p style="text-align: right;">5</p> <p>1 marked.)</p> <p>2 <u>EXAMINATION BY MR. MURPHY:</u></p> <p>3 Q. We've been chatting off the record. Let</p> <p>4 me reintroduce myself. I'm Bob Murphy,</p> <p>5 and I represent the defendant in this</p> <p>6 case.</p> <p>7 We've had your report marked as</p> <p>8 the first Exhibit, and I'd like to go</p> <p>9 over that with you.</p> <p>10 A. Do you want to identify me for the</p> <p>11 record?</p> <p>12 Q. She's done that already.</p> <p>13 MR. MURPHY: Haven't you?</p> <p>14 Could you tell us all who you are?</p> <p>15 A. I'm Arthur C. Sargent. The last name is</p> <p>16 S-a-r-g-e-n-t.</p> <p>17 Q. Okay, and she made you show ID, so we</p> <p>18 know it's really you. Would you tell me</p> <p>19 where you live?</p> <p>20 A. Yes, New Orleans.</p> <p>21 Q. You've provided us with your report that</p> <p>22 we've marked as Exhibit 1, a CV?</p> <p>23 A. Yes, sir.</p> <p>24 Q. And that accurately describes your</p>	<p style="text-align: right;">6</p> <p>1 education?</p> <p>2 A. Yes.</p> <p>3 Q. And experience?</p> <p>4 A. Yes.</p> <p>5 Q. Let me ask you, is this your most recent</p> <p>6 and up-to-date CV?</p> <p>7 A. Yes.</p> <p>8 Q. And let me direct your attention to</p> <p>9 appendix two, which is entitled</p> <p>10 "Publications authored by Arthur</p> <p>11 Sargent."</p> <p>12 A. Yes.</p> <p>13 Q. Is that up to date, as well?</p> <p>14 A. Yes.</p> <p>15 Q. Appendix three is a rate schedule.</p> <p>16 A. Yes.</p> <p>17 Q. Is that up to date?</p> <p>18 A. Yes.</p> <p>19 Q. Is four up to date?</p> <p>20 A. I don't know.</p> <p>21 Q. It only goes up to 2004.</p> <p>22 A. Probably pretty close up to date. There</p> <p>23 might be one or two that should be added</p> <p>24 to that.</p>
<p style="text-align: right;">7</p> <p>1 Q. Do you know whether you've testified at</p> <p>2 deposition or trial since August of --</p> <p>3 A. Yes, it just hasn't been brought up to</p> <p>4 date.</p> <p>5 Q. Okay, can you tell me the cases?</p> <p>6 A. No, I don't have my file with me. But, I</p> <p>7 can get my secretary to bring you up to</p> <p>8 date.</p> <p>9 Q. Okay. No problem with that.</p> <p>10 A. Remember, this goes back to probably some</p> <p>11 time very early. This was faxed to you</p> <p>12 February of '05.</p> <p>13 Q. Sure.</p> <p>14 A. And we're now a year later.</p> <p>15 Q. Fine. But, no problem updating that?</p> <p>16 A. No.</p> <p>17 Q. Okay, you can get that to me. Great. I</p> <p>18 just want to go through documents you may</p> <p>19 have. You're a principal of Sargent and</p> <p>20 Herkes -- is that how it's --</p> <p>21 A. Herkes.</p> <p>22 Q. Herkes.</p> <p>23 A. Yes, I'm president.</p> <p>24 Q. Can you tell me what advertising you do,</p>	<p style="text-align: right;">8</p> <p>1 if any?</p> <p>2 A. Yes, Maritime Reporter and Marine Log.</p> <p>3 Q. Do you have any -- well, I trust you have</p> <p>4 promotional materials that you provide to</p> <p>5 prospective clients.</p> <p>6 A. Well, I do in the office, yes.</p> <p>7 Q. Okay. Do you have any list of references</p> <p>8 that you give people?</p> <p>9 A. Probably there's something in the</p> <p>10 promotional information.</p> <p>11 Q. And those are documents that you can</p> <p>12 obtain for me?</p> <p>13 A. Yes, they're in my office.</p> <p>14 Q. Sure.</p> <p>15 A. I'll be happy to provide advertising</p> <p>16 materials.</p> <p>17 Q. What kind of work do you do; you?</p> <p>18 A. I'm basically a naval architect. I'm a</p> <p>19 designer.</p> <p>20 Q. Okay.</p> <p>21 A. When I say designer, if you go to my</p> <p>22 resume, I design all types of vessels</p> <p>23 that float. I do not design submarines,</p> <p>24 for example, that go underneath, nor do I</p>

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<p style="text-align: right;">9</p> <p>1 design buildings. I'm a naval architect.  2 I design offshore supply boats, offshore  3 drilling rigs, river barges, offshore  4 barges, chemical carriers, just about any  5 type of structure or vessel that's on  6 water.  7 I've designed wave machines,  8 devices to extract energy from waves.  9 And again, they float, and they extract  10 energy. But, basically I'm a naval  11 architect. I design things.  12 However, I also consult with  13 attorneys and underwriters and others who  14 are involved in the marine field.  15 Q. What percent of your business does that  16 make up?  17 A. Probably 50% right now.  18 Q. About half?  19 A. Yes. In other words, the design is half,  20 and this consulting with others is about  21 half.  22 Q. Okay. And who do you mostly work for,  23 plaintiffs, defendants?  24 A. Mostly for defense. And I think it's</p>	<p style="text-align: right;">10</p> <p>1 obvious my clients are normally defense.  2 I work, oh, probably 90% of the time for  3 defense, 10% of the time for plaintiffs.  4 Well, I have to say, "plaintiffs or  5 defense," I assume we're talking about  6 personal injury cases rather than, for  7 example, collision cases. The plaintiff  8 in a collision case is the one who gets  9 to the court first.  10 Q. Right.  11 A. And to make anything meaningful, you have  12 to talk in terms of personal injury  13 cases.  14 Q. That's what I meant.  15 A. Personal injury cases, probably 90% of  16 the time on defense, 10% plaintiff. And  17 why is that so? Well, I work and do all  18 my major work for firms that would  19 normally be involved with defense cases,  20 oil companies, contractors, shipyards,  21 rather than individuals who get hurt  22 someplace.  23 However, the biggest problem, I  24 think, is in many cases, plaintiffs'</p>
<p style="text-align: right;">11</p> <p>1 attorneys don't know how to contact me.  2 I don't advertise where plaintiffs'  3 attorneys would look. I don't have  4 something that advertises in plaintiffs'  5 law reviews and things of that sort. I  6 don't go out seeking plaintiff-type  7 cases.  8 However, if they're generally  9 outside my area -- and I say, "area,"  10 physical area, New Orleans, or Gulf  11 Coast, -- I can handle them. Why? I  12 know all the defense attorneys in New  13 Orleans. And there's nothing worse than  14 all of a sudden getting to a trial and  15 you find your fellow who hires you all  16 the time sitting across the way from you.  17 So I stay away from working  18 plaintiff cases in New Orleans, although  19 I have had a few. But, generally, I make  20 certain that there is no conflict of  21 interest, I don't see a defense attorney  22 I do a lot of work for, for example.  23 Q. What history, if any, do you have with  24 Barish Rosenthal, or anybody in that</p>	<p style="text-align: right;">12</p> <p>1 office?  2 A. I think I've worked three cases with  3 them, or been involved with three cases.  4 Q. And how recent were they?  5 A. Probably within the last two years.  6 Q. Do you remember the names of the cases?  7 A. This one. And another one had to do with  8 a fellow by the name of King. But, it's  9 not the same King as this.  10 Q. Right.  11 A. And then another one that had to do with  12 a vessel down there in Florida getting  13 caught in some unusual conditions.  14 Q. Was it a personal injury case?  15 A. Personal injury cases. The vessel sank,  16 as I remember.  17 Q. How many employees in your firm?  18 A. Four.  19 Q. Can you name them for me?  20 A. Sure. John Pierce, my naval architect;  21 my secretary; and John Williams.  22 Q. Is Herkes gone?  23 A. Yes, Herkes retired.  24 Q. Can you estimate for me, the firm's</p>

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<p>1 annual receivables? 2A. I was going to say a half mil. 3Q. And about half of that would be for 4 litigation and litigation support type of 5 things? 6A. Probably. 7Q. And can you tell me your annual pay? 8A. Sure, probably around eighty-five. 9Q. And about half of that would be from -- 10A. Probably. 11Q. Okay. 12A. Remember, when we say, "half of it," -- 13 yeah, I guess that's the easiest way to 14 handle it. I don't know how you can 15 break it down, unless I went down case by 16 case. 17Q. I'm just looking for a ballpark. 18 I notice on your resume, you've 19 got a broad description of what you did 20 at Breit &amp; Garcia. 21A. Breit &amp; Garcia, yes. 22Q. Yeah, but not under this Sargent &amp; 23 Herkes? 24A. No.</p>	13	<p>1Q. Is it the same type of stuff? 2A. Same type of stuff. It would be a repeat 3 of their same type of material. 4Q. Okay. And is it current that you're 5 still designing vessels? 6A. Oh, yes, surely; modifications. I'm 7 still a naval architect. That's what I 8 do. That's what I've done my entire 9 life. I would not know how to, for 10 example, go out and open up a restaurant. 11 I've never been in the restaurant 12 business. I'd close within 30 days, 13 probably. But, I know the naval 14 architecture business. 15Q. So, on a daily basis, you're still in 16 there designing? 17A. I'm still a naval architect. 18Q. Okay. Maybe you could run me through 19 your experience with small boats, and 20 specifically, outboard motors? 21A. I've been involved with many of these 22 cases that have to do with people being 23 thrown from small boats. That's probably 24 the most viable case I can think of with</p>	14
<p>1 small vessels. Generally what happens, 2 someone buys a vessel in the range of, 3 perhaps, 20 -- I'd say 16 to 25 feet. He 4 buys it with, let's say a 40 horsepower 5 motor. And it doesn't go fast enough. 6 So what he does, he puts a 200 horsepower 7 motor on it. He goes fast. He loses 8 control. And he gets in a turn of some 9 sort and he goes [onomatopoeia] flying 10 out of the boat. And those generally are 11 death cases in some way or other. 12 I've also designed these small 13 boats, similar to this one, for cargo 14 carriers. And they're an operator on the 15 river, and they needed a little boat to 16 handle 55 gallon drums, oil, lube oil, 17 waste oils, to towboats. And they wanted 18 an aluminum vessel. And I designed an 19 aluminum vessel for them that was about 20 30 feet long, powered by a couple of 21 outboard motors. And this goes back 22 about 20 years ago, or so. 23 But, mainly I'm involved with 24 those from a standpoint of people being</p>	15	<p>1 injured on the boats. Also collisions. 2 They're involved with collisions of 3 towboats. They run into the side of 4 towboats. They run into the wires on 5 towboats. They get hit or get damaged by 6 going over the waves in towboats such 7 that there's a situation where someone on 8 the smaller boat, for example, is suing 9 someone I'm involved with who is the 10 owner of the towboat. 11 So that's how I normally get 12 involved with these cases. And collision 13 cases, personal injury cases, also 14 design. 15Q. This case involved the outboard motor 16 stalling out, -- 17A. Yes. 18Q. -- the one we're here for today? 19A. Well, other things happened too. 20Q. Sure did, yeah. 21A. That's just part of it, the outboard 22 motor -- 23Q. What experience do you have with that, 24 the mechanical aspect?</p>	16

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17

1 A. A number of cases where something goes  
2 wrong. Generally, they're talking about  
3 steering of the outboard motors. Every  
4 time there's a failure or something goes  
5 wrong with an outboard motor, someone  
6 looks at the steering company, because  
7 steering is inherently involved with  
8 these outboard motors. And normally  
9 they're steered from a console, and  
10 there's a wire, a Teleflex cable, for  
11 example, and they're generally brought  
12 in. I've been involved with representing  
13 Teleflex on certain cases.  
14 And also in certain cases the  
15 outboard motor malfunctions. But, in  
16 general, we don't have too many troubles  
17 with outboard motors. They're quite  
18 reliable if they're maintained. However,  
19 in this case, we're talking about an  
20 outboard motor that was emerged in salt  
21 water, and was not brought back as it  
22 should have been for maintenance of the  
23 outboard motor.  
24 Q. So, maintenance of the outboard motor is

18

1 important, --  
2 A. Absolutely.  
3 Q. -- in your mind?  
4 A. Certainly.  
5 Q. And what sort of maintenance are we  
6 talking about? And I'm speaking  
7 generally now. We'll get to our case  
8 specifically.  
9 A. Seeing it's in good repair, for example;  
10 the oil is changed; the sparkplugs are  
11 changed. At the beginning of the season  
12 you can take it to someone if it's not  
13 performing properly, and have it checked  
14 over. And certainly if it's dunked,  
15 getting the salt water emersion, you want  
16 it repaired.  
17 Q. Other things than salt water emersion can  
18 cause you to have problems with an  
19 outboard motor; is that fair to say?  
20 A. Oh, yeah they wear out under certain  
21 conditions. Teleflex cables, for  
22 example, wearing out.  
23 Q. How about things that would cause the  
24 motor to stall?

19

1 A. Well, you can get water in the fuel.  
2 That would cause a motor to stall.  
3 Q. Could the oil, problems with the oil,  
4 cause it to stall?  
5 A. Well, if you don't put any oil in it, you  
6 can have some real problems. It'll  
7 seize.  
8 Q. Sure.  
9 A. Yeah, lots of things can happen to a  
10 motor.  
11 Q. Okay.  
12 A. However, this particular case is a little  
13 bit different because we have an outboard  
14 motor repairer suggesting, or  
15 recommending, that certain electrical  
16 pieces of equipment be changed out that  
17 would have to do with possible failure of  
18 the motor.  
19 Q. Your report lists the documents that you  
20 reviewed before you came -- before you  
21 wrote your report. Have you reviewed  
22 additional -- and I understand you've  
23 also reviewed the deposition of Mr. King.  
24 A. Yes.

20

1 Q. You've made that clear. Have you  
2 reviewed any other documents?  
3 A. Yes, a number of other documents.  
4 Q. Okay, can you tell me what?  
5 A. Sure. Two additional depositions.  
6 [Looking through documents.] Deposition  
7 of Alex Dick. And it's not here. It  
8 should be here.  
9 Q. Wagner is it?  
10 A. Yeah, and Nicholas Wagner.  
11 MR. ROSENTHAL: Also, just for  
12 the record, I wanted to just put  
13 something on the record. A number of  
14 documents were just handed to me at the  
15 beginning of the deposition that Mr.  
16 Sargent has not had a chance to look  
17 through, including what appear to be  
18 daily labor reports and a standard diary,  
19 a copy of which was handed to my hotel  
20 room last night.  
21 And Mr. Sargent has not had a  
22 chance to look through any of those  
23 documents yet.  
24 A. I think that's about it.



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21

1 Q. Okay, you didn't get a chance to look at  
2 the diary last night?  
3 A. No. And the only other information that  
4 I have in my file are the two things I  
5 got from the Web.  
6 Q. Okay, the two depositions that you  
7 referenced, did that cause you to change  
8 your opinion at all?  
9 A. No.  
10 Q. Was there anything in there that  
11 solidified your opinion?  
12 A. Yes, I think Mr. Dick talks about also he  
13 knew about the engine stalling. In other  
14 words, there were others who knew about  
15 the condition of the engine. I'm reading  
16 directly from his deposition, page 36,  
17 *"Do you know whether the engine stalled*  
18 *or not? I heard that it did. Who told*  
19 *you that? I don't remember who told me*  
20 *that. I heard various accounts."*  
21 So, he knew about the stalling.  
22 Q. Well, because he's talking about the  
23 engine stalling in the incident that  
24 caused the personal injury.

23

1 A. Even on the phone.  
2 Q. Have you consulted any treatises or  
3 professional documents, standards, regs.,  
4 that sort of thing?  
5 A. No, not in this particular case.  
6 Q. You've got your report in front of you,  
7 and I'm not trying to keep us here longer  
8 than we've got to, so --  
9 A. Brevity is your middle name.  
10 Q. So, soul of wit, right?  
11 So it's fair to say you  
12 understand that Mr. Ramsey was employed  
13 aboard the Wood 1.  
14 A. No, I just understood he's employed by  
15 Jay Cashman. Yeah, aboard the vessel.  
16 Q. Okay, do you have any understanding as to  
17 what his job or duties aboard the vessel  
18 were?  
19 A. Well, he was employed as a mate engineer.  
20 And he did practically anything that he  
21 was required. He ran the boat, although  
22 he was not a captain. He did maintenance  
23 work. He handled lines whenever  
24 necessary; whatever. He was not a crane

22

1 A. Yes, yeah, right.  
2 Q. But not preexisting stalling.  
3 A. No, he heard about the stalling.  
4 Q. The fact that the engine had stalled --  
5 A. Right.  
6 Q. -- in connection with the incident Mr.  
7 Ramsey's brought the suit for.  
8 A. That was my reading of it.  
9 Q. Well, that'll speak --  
10 MR. ROSENTHAL: Well, the  
11 testimony will speak for itself.  
12 MR. MURPHY: Sure it will. Okay.  
13 Q. Let's forge ahead. Like Sam says, it is  
14 what it is.  
15 A. It's there or it's not there.  
16 Q. Exactly. Have you interviewed Mr.  
17 Ramsey?  
18 A. No.  
19 Q. Have you spoken to him at all?  
20 A. No.  
21 Q. Would you be able to pick him out of a  
22 lineup?  
23 A. No.  
24 Q. Okay, even on the phone?

24

1 operator, though.  
2 Q. And it's your understanding as well that  
3 the incident occurred at Barnegat Inlet  
4 Lighthouse on the coast of New Jersey?  
5 A. That's correct.  
6 Q. Have you ever been there?  
7 A. No.  
8 Q. And it's fair to say you haven't reviewed  
9 any documents concerning the tides or  
10 charts or current information; that sort  
11 of thing?  
12 A. Yeah, I went to the charts. I tried to  
13 pick out some tide information, but there  
14 was no tide information I could get. I  
15 tried it from the Internet, the Web. I  
16 tried to find out whether there was  
17 anything published. I could not find  
18 anything published about the tides.  
19 Q. Okay.  
20 A. I was looking for that specifically. And  
21 I think what it would require is talking  
22 to local fisherman, for example, local  
23 operators, marine operators in that area.  
24 And that would require, perhaps, a trip

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<p style="text-align: right;">25</p> <p>1 up to Barnegat, and I just never made it.</p> <p>2 Q. Okay.</p> <p>3 A. So, we have to go to the best source of</p> <p>4 information. And the best source of</p> <p>5 information are the fellows who testify</p> <p>6 about this in the depositions. And they</p> <p>7 range anywhere from 6 to 12 knots,</p> <p>8 current conditions. And if you want</p> <p>9 other information you go to the -- as I</p> <p>10 remember -- the Coast Guard or Corp of</p> <p>11 Engineers accident report. And that</p> <p>12 talks about 4 to 5, or more, knots.</p> <p>13 Q. And why were you looking for the -- you</p> <p>14 mentioned you did some things to try and</p> <p>15 find that information.</p> <p>16 A. Well, it goes back to trying to find out</p> <p>17 what horsepower might be required on this</p> <p>18 little boat to have the proper</p> <p>19 maneuverability conditions. And I found</p> <p>20 that 40 horsepower is not sufficient. It</p> <p>21 should have been more than 40 horsepower.</p> <p>22 Q. So, as far as quantifying the tidal</p> <p>23 conditions or the current, the condition</p> <p>24 of the current, you just relied on other</p>	<p style="text-align: right;">26</p> <p>1 sources?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And as far as the skiff itself</p> <p>4 that you mentioned, you've never seen</p> <p>5 that?</p> <p>6 A. No. Way back I originally requested that</p> <p>7 I visit the skiff and inspect it, find</p> <p>8 out its size, dimensions, how much it</p> <p>9 weighs, in terms of type construction. I</p> <p>10 was advised, however, the skiff had been</p> <p>11 taken out of service and was no longer</p> <p>12 available. "Taken out of service," could</p> <p>13 have meant anything like, "We don't know</p> <p>14 where it is," to "We cut it up for</p> <p>15 scrap." But, it was not available for</p> <p>16 inspection.</p> <p>17 Q. And why, specifically, did you want to</p> <p>18 inspect it?</p> <p>19 A. Oh, I wanted to find out what size it</p> <p>20 was. All we know is it ranges 17, 18, to</p> <p>21 23 feet long. I think it's probably 17</p> <p>22 or 18. How wide is it? I have to look</p> <p>23 at the photographs, and possibly 5 feet</p> <p>24 wide. I have to know how deep it is.</p>
<p style="text-align: right;">27</p> <p>1 And the only thing that I have on that is</p> <p>2 2 1/2 to 3 feet draft, plus a foot</p> <p>3 freeboard, which means it's somewhere</p> <p>4 around 3 to 3 1/2 feet deep at the side.</p> <p>5 And I thought that looking at the</p> <p>6 photographs might help, but no one has a</p> <p>7 tape, nor is there anything I can use as</p> <p>8 a measuring reference point to determine</p> <p>9 anything about the size of the vessel.</p> <p>10 So, that I have to look at it when</p> <p>11 someone says, "17 or 18 feet long," I</p> <p>12 then have to say, "Well, is it 2 1/2, 3</p> <p>13 feet, 3 1/2 feet deep at the side; how</p> <p>14 wide is it?; it's 4 1/2 feet, 5 feet</p> <p>15 wide," to give me a range.</p> <p>16 But, I have not measured it, nor</p> <p>17 does it appear anyplace in the record</p> <p>18 exactly what size this is.</p> <p>19 Q. All right, let's go through your report</p> <p>20 together, okay? And why don't we start</p> <p>21 on page 2, halfway down, it says, "When</p> <p>22 Mr. Ramsey reached the stern of the</p> <p>23 dredge, the captain requested that the</p> <p>24 parts be brought to the bow."</p>	<p style="text-align: right;">28</p> <p>1 You've seen Ken King's</p> <p>2 deposition?</p> <p>3 A. Right.</p> <p>4 Q. And you understand that he disputes that?</p> <p>5 A. Yes.</p> <p>6 Q. So that was Mr. Ramsey's testimony?</p> <p>7 A. Yeah, this is Mr. Ramsey's. Remember, at</p> <p>8 this point I did not have Mr. King's</p> <p>9 deposition? There are certain</p> <p>10 differences between the two, but the</p> <p>11 stories basically are the same. It's a</p> <p>12 question of where he told him or did not</p> <p>13 tell him to bring the skiff.</p> <p>14 Q. Well, it's kind of an important point,</p> <p>15 don't you think?</p> <p>16 A. No, I don't think it has anything to do</p> <p>17 with anything.</p> <p>18 Q. Whether he voluntarily took a skiff that</p> <p>19 he knew was stalling, and moved it around</p> <p>20 the other side so that he didn't have to</p> <p>21 carry a box of parts versus somebody</p> <p>22 ordering him to do it seems --</p> <p>23 A. No, I don't think so. I think that he</p> <p>24 didn't want to be there in the first</p>

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<p style="text-align: right;">29</p> <p>1 place, at the stern. He got there</p> <p>2 because the vessel, the skiff, stalled</p> <p>3 and brought him there. I don't think he</p> <p>4 would have ever brought the vessel to the</p> <p>5 stern. He would have brought it to the</p> <p>6 side. That is, the starboard side of the</p> <p>7 Wood 1, rather than the stern. It was</p> <p>8 only because of this vessel -- that is,</p> <p>9 the skiff -- stalling that he got himself</p> <p>10 into that position.</p> <p>11 Q. But, at that point, he knew the skiff was</p> <p>12 stalling.</p> <p>13 A. Oh, yes. Everyone did, certainly. When</p> <p>14 I say, "everyone," Mr. King knew about</p> <p>15 it, and certainly Mr. Ramsey knew about</p> <p>16 it, and others knew about it.</p> <p>17 Q. Do you have any other -- I really just</p> <p>18 wanted to ask you the source for some of</p> <p>19 the assertions that are made in the</p> <p>20 report. So, --</p> <p>21 A. For example?</p> <p>22 Q. Well, the idea that the captain ordered</p> <p>23 him to -- or requested that the parts be</p> <p>24 brought to the bow.</p>	<p style="text-align: right;">30</p> <p>1 A. That's what Mr. Ramsey says.</p> <p>2 Q. And do you base that on any other source?</p> <p>3 A. No, Mr. Ramsey is the one who says that.</p> <p>4 Q. Okay.</p> <p>5 A. Remember, this report was written at the</p> <p>6 time I did not have Mr. King's. I had</p> <p>7 Mr. Ramsey's deposition, and Mr. Ramsey's</p> <p>8 statement.</p> <p>9 Q. Sure, sure. Okay, I'm just going to read</p> <p>10 on; "As Mr. Ramsey was maneuvering away</p> <p>11 from the stern of the dredge, while</p> <p>12 trying to keep clear of the stern mooring</p> <p>13 lines, the skiff struck one of the</p> <p>14 mooring lines."</p> <p>15 And, again, you base that on Mr.</p> <p>16 Ramsey's testimony?</p> <p>17 A. Yes, that comes from his statement. It</p> <p>18 does not come from his deposition. It</p> <p>19 comes from his statement.</p> <p>20 Q. Okay, and the statement was nearer in</p> <p>21 time?</p> <p>22 A. Yes, the statement was what, two months</p> <p>23 after the accident? While the</p> <p>24 deposition, I think, was much later than</p>
<p style="text-align: right;">31</p> <p>1 that. I know it's much later. The</p> <p>2 deposition is 2004 and the accident</p> <p>3 occurred in 2001.</p> <p>4 Q. So at least at the time you wrote the</p> <p>5 report, it was your understanding that</p> <p>6 the vessel hit the mooring line and then</p> <p>7 stalled out?</p> <p>8 A. Possibly. It's not quite clear whether</p> <p>9 the hitting the mooring line stalled it</p> <p>10 out, or whether it just stalled out by</p> <p>11 itself.</p> <p>12 Q. And then hit the mooring line?</p> <p>13 A. Possibly.</p> <p>14 Q. Okay. And can that cause the boat to</p> <p>15 stall, hitting the mooring line?</p> <p>16 A. Could. If the propeller hit the mooring</p> <p>17 line it could.</p> <p>18 Q. Could that cause a well-maintained motor</p> <p>19 to stall?</p> <p>20 A. Sure it could.</p> <p>21 Q. You've got the records from the marina</p> <p>22 that did the repairs, don't you?</p> <p>23 A. Yes.</p> <p>24 Q. You may want to take a look at them, as</p>	<p style="text-align: right;">32</p> <p>1 well.</p> <p>2 A. I think that's Hochstrasser's.</p> <p>3 Q. Uh-huh.</p> <p>4 A. Yes.</p> <p>5 Q. And according to your report, the note</p> <p>6 states, -- how do you pronounce that,</p> <p>7 s-t-a-t-o-r?</p> <p>8 A. Stator.</p> <p>9 Q. And what does the stator do?</p> <p>10 A. Stator is a connection with the</p> <p>11 alternator, generator aboard the</p> <p>12 outboard.</p> <p>13 Q. "Stator, voltage regulator, switch boxes,</p> <p>14 starter solenoid were not changed."</p> <p>15 A. Uh-huh.</p> <p>16 Q. I'm just going to ask you to explain some</p> <p>17 of this to me. And I'm not quite sure I</p> <p>18 understood you previously. The stator</p> <p>19 does what?</p> <p>20 A. Has to do with the generator aboard the</p> <p>21 motor.</p> <p>22 Q. And what does it do for the generator?</p> <p>23 A. Provides the electricity to generate the</p> <p>24 sparkplug to produce the spark.</p>



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1 Q. So that would be implicated when you're  
2 starting the motor?  
3 A. Yes.  
4 Q. And how about the voltage regulator, what  
5 does that do?  
6 A. Similar to what you have onboard an  
7 automobile, to when you're charging your  
8 battery, it keeps the charge to the  
9 battery at a constant voltage. Rather  
10 than just going up to extreme high  
11 levels, it keeps it at a reasonable level  
12 to charge your battery.  
13 Q. The switch boxes, what does that do?  
14 A. That's just an on and off switch  
15 someplace on the motor.  
16 Q. And the starter solenoid, what does that  
17 do?  
18 A. When you push something, it will then  
19 activate the starter motor.  
20 Q. Okay. Now, what evidence, or what  
21 support do you have for the idea that any  
22 of those issues caused the vessel to  
23 stall, caused the motor to stall?  
24 A. They're all electrical parts. The

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1 position?  
2 A. Nope.  
3 Q. So, that's just a --  
4 A. Right.  
5 Q. -- guess on your part?  
6 A. No, not a guess. Remember, the vessel  
7 got under water, and I guess the rain --  
8 and it sotted out.  
9 Q. Uh-huh.  
10 A. And it was taken over to Hoffstrasser --  
11 or Hochstrasser -- to make certain it's  
12 put in the proper operating condition.  
13 And someone decided to do it, as far as I  
14 can see, on the cheap. And when I say,  
15 "on the cheap," not do a couple of items  
16 here, and changing out the electrical end  
17 of it.  
18 When you have something dunked in  
19 salt water, normally you change out  
20 everything to do with the electrical.  
21 Q. And why is that?  
22 A. The electrical can short out. It's  
23 damaged, rusted, corroded. It's just  
24 general good practice, marine practice,

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1 voltage regulator -- if the voltage drops  
2 for any reason or other, you don't get  
3 the voltage to the sparkplug, and it'll  
4 stall on you.  
5 Q. Do you know whether that happened in this  
6 case?  
7 A. I have no idea.  
8 Q. One way or another?  
9 A. Have no idea. I did not see the motor in  
10 the condition it was after it left  
11 Hochstrasser before the casualty  
12 occurred, before it was dumped the second  
13 time, or the third time, to make some  
14 determination. But, without that, you  
15 can't do it.  
16 I would assume that these people  
17 -- I say, "these people" -- the  
18 Hochstrasser mechanic, tested out these  
19 parts and said, "This is no good, we  
20 should change it," or, "This is no good,  
21 we should change it."  
22 Q. You haven't spoken to anyone from there?  
23 A. No, I have not spoken --  
24 Q. Has anyone informed you of their

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1 when you dunk something, to submerge it  
2 in salt water, to replace it immediately  
3 thereafter, if you want to go back in  
4 operation with it. That's the general  
5 practice, and not to try to see, "Well,  
6 can we get by this, or not?"  
7 The cost of replacing this was  
8 nominal, as I remember. In this  
9 particular case, they decided not to do  
10 it. And it's quite clear what they  
11 indicated, "stator, voltage regulator,  
12 switch boxes, starter solenoid were not  
13 changed." -- and we had that underlined,  
14 were not changed -- "Advise doing so  
15 since it sank in salt water."  
16 So here's a marina that does  
17 repairs on engines saying, "Look, this  
18 thing sank in salt water; you'd better do  
19 something about it." And someone decided  
20 not to do it.  
21 Q. Do you know how long it would take to  
22 effect those repairs, typically?  
23 A. I would think they'd be able to get those  
24 repairs done in a week. I mean, it's a

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1 Mercury outboard. It's a common outboard  
2 motor. Someone must be a distributor of  
3 an outboard. And I guess if you pushed  
4 these fellows to do it, you could get it  
5 done in a couple of days. But, certainly  
6 no more than a week.  
7 Q. And do you have an idea of what the cost  
8 would be for those kind of repairs?  
9 A. I think someone basically did the same  
10 repairs, or was telling about the same  
11 repairs. Here it is, "A harness, relay,  
12 solenoid." It looks like about \$120  
13 worth. And it would be about the same  
14 thing here, \$120 worth. So, really it  
15 should only have been \$120 more than  
16 \$350.  
17 So, it would add up to less than  
18 \$500 for the entire change-out of  
19 everything on this engine to make it as  
20 -- I wouldn't say it's as good as new --  
21 but, as good as it was before, and  
22 suitable to operate.  
23 Q. Let me ask you this. Let's just assume  
24 hypothetically, you'd been called in the

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1 easily.  
2 Q. I see. And all these pieces wear out on  
3 their own at some point regardless of  
4 whether they're emerged in salt water?  
5 A. Perhaps; perhaps.  
6 Q. Nothing lasts forever.  
7 A. Right, most things don't. I can't think  
8 of very much.  
9 Q. And let me ask you, if something had  
10 shorted out, would there be telltale  
11 signs that this was an electrical  
12 problem?  
13 A. If something kept shorting out, you could  
14 always send it back to Hochstrasser and  
15 say, "Figure out what's happening."  
16 Q. No, I mean after the fact. Is there a  
17 way you could have looked at that motor,  
18 and there'd be telltale signs that there  
19 was an electrical problem?  
20 A. Yeah. You'd find corrosion someplace.  
21 You could pull each part, that is, each  
22 piece apart, and test it individually. I  
23 don't know where this would get you,  
24 though, because we had a second dunking,

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1 day this happened. You'd go look at the  
2 boat, I take it, and look at the motor?  
3 A. Uh-huh.  
4 Q. And what would you be looking for? What  
5 would you do?  
6 A. Oh, I'd just -- when you say, "I'm  
7 looking at it," as what, sort of an  
8 owner, or --  
9 Q. Let's say I called you up and said, "Hey,  
10 I represent Cashman," or Mr. Rosenthal  
11 called you up and said, "I represent  
12 Steve Ramsey, and we've had a problem  
13 with this boat, and we want you to go  
14 look at it and tell us what you think,"  
15 what would the drill be?  
16 A. I'd check out all of these pieces and  
17 find out whether they were bad, at that  
18 point. But, I wouldn't know whether they  
19 were bad because of a condition that  
20 preexisted, or this time in the salt  
21 water. So, probably I couldn't do very  
22 much with it. It's been damaged a second  
23 time, and we cannot separate out the  
24 damage before from the damage after, very

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1 a second emersion; whether you could  
2 figure out that it had to do with the  
3 first emersion or the second emersion. I  
4 don't know whether you could find that  
5 out.  
6 Let's assume the first time you  
7 did everything perfectly. You did  
8 exactly what Hochstrasser told us to do.  
9 You changed everything. And then we had  
10 a second dunking, the same pieces  
11 probably would be required to be changed  
12 out. You'd go through the same drill the  
13 second time, because we had a second  
14 sinking. So, you change out everything  
15 the second time.  
16 Q. Okay. Let me ask you this -- I know  
17 you've read Mr. Ramsey's testimony. The  
18 boat stalled out on him as he returned to  
19 the barge; did you understand that?  
20 A. Yes.  
21 Q. And then you understand that he worked on  
22 the boat a little bit?  
23 A. Yes. Worked on the boat a little, --  
24 Q. Worked on the motor.

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<p style="text-align: right;">41</p> <p>1A. Tried to get it started, yes.</p> <p>2Q. Yeah, what do you understand that he did?</p> <p>3A. I don't know. He was there working on</p> <p>4 it. What he actually did, I don't know.</p> <p>5Q. Okay, but at some point he got it started</p> <p>6 up again?</p> <p>7A. He got it started up again.</p> <p>8Q. Does that lead you to believe one way or</p> <p>9 the other that it's more likely or less</p> <p>10 likely that the problem was electrical?</p> <p>11A. I don't know what to make of it, because</p> <p>12 I don't know what he did.</p> <p>13Q. Well, if something shorts out, would you</p> <p>14 be able to start it up again?</p> <p>15A. Jiggle a wire, perhaps. I don't know</p> <p>16 what he did.</p> <p>17Q. How likely would that be?</p> <p>18A. I don't know what he did, whether that</p> <p>19 was the problem or not.</p> <p>20Q. What I'm trying to --</p> <p>21A. I don't know what the problem is. I</p> <p>22 can't answer your question.</p> <p>23Q. Okay, let me just ask it in a general</p> <p>24 sense, then. If an outboard motor stalls</p>	<p style="text-align: right;">42</p> <p>1 out because of an electrical problem, how</p> <p>2 likely is it that the motor would then --</p> <p>3 you'd be able to get it going again?</p> <p>4 MR. ROSENTHAL: Objection to</p> <p>5 form.</p> <p>6A. If you change out the electrical problem,</p> <p>7 it'll fix the --</p> <p>8Q. No, no, I don't mean that. I mean, I'm</p> <p>9 driving my outboard motor back to the</p> <p>10 barge and it stalls out. I drift back to</p> <p>11 the barge, and then 5 or 10 minutes later</p> <p>12 I get the motor going again. How likely</p> <p>13 is that if it was an electrical problem?</p> <p>14 MR. ROSENTHAL: Objection to</p> <p>15 form.</p> <p>16A. I don't know. I can't answer the</p> <p>17 question.</p> <p>18Q. What's the problem with the question?</p> <p>19 I'm looking for your answer on this.</p> <p>20A. Yeah, I don't really -- he can jiggle</p> <p>21 something, and all of a sudden it makes</p> <p>22 good contact again.</p> <p>23Q. Would that be for a loose wire?</p> <p>24A. Possibly. I'm thinking the easiest</p>
<p style="text-align: right;">43</p> <p>1 explanation -- you have a flashlight that</p> <p>2 doesn't really work -- I've got it, a</p> <p>3 television clicker, changing channels.</p> <p>4 It has a couple of batteries in it. And</p> <p>5 all of a sudden you can't change the</p> <p>6 channel; it doesn't work. You open it up</p> <p>7 and you rub the batteries, the end of the</p> <p>8 batteries; put them back in. And low and</p> <p>9 behold, like magic, it works again. What</p> <p>10 have you done? You've changed some</p> <p>11 resistant values, or jiggling a wire,</p> <p>12 maybe is a better way of saying it.</p> <p>13 But, basically you put back the</p> <p>14 batteries and you can change the</p> <p>15 channels. I assume everyone has done</p> <p>16 this at some time or other.</p> <p>17Q. Sure.</p> <p>18A. And that's the same thing I'm talking</p> <p>19 about here. He gets in and pushes around</p> <p>20 something. And low and behold --</p> <p>21Q. But, would you be able to do that with a</p> <p>22 -- okay, and I understand --</p> <p>23A. I don't know. I really don't know what</p> <p>24 could have been done. And that's why I</p>	<p style="text-align: right;">44</p> <p>1 say I can't answer the question. All I</p> <p>2 can say is, by analogy, indeed, there are</p> <p>3 conditions I can think of where you just</p> <p>4 jiggle something, or make better contact,</p> <p>5 and low and behold it works like magic.</p> <p>6 And whether it's the same thing</p> <p>7 here, if there was, in fact, a loose wire</p> <p>8 and does something, he pushed the button</p> <p>9 again, and it starts, I don't know what</p> <p>10 to make of it.</p> <p>11 But, we also have a different</p> <p>12 condition here. We have something where</p> <p>13 it's not going into reverse.</p> <p>14Q. What's that indicative of?</p> <p>15A. I don't know. I don't know the problem</p> <p>16 with it.</p> <p>17Q. Okay.</p> <p>18A. I have no idea what the problem is, but</p> <p>19 they indicated it could not go in</p> <p>20 reverse, or when they tried going in</p> <p>21 reverse it would stall on them.</p> <p>22Q. Okay.</p> <p>23A. And I'd like to believe that these</p> <p>24 fellows could evaluate and investigate</p>

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1 that sort of problem and find out what it  
2 was. It was never done.  
3 Q. Could you define for me generally, just  
4 so we get a starting off point, what a  
5 short circuit is? I think you used the  
6 term, right?  
7 A. Yeah, where something, a live wire goes  
8 to ground.  
9 Q. And what happens?  
10 A. You get a spark, or you run down your  
11 battery, or the thing just doesn't work  
12 because you have an open circuit.  
13 Q. Okay. And just to go back to your  
14 analogy with the clicker from the TV, if  
15 you had a short circuit, you wouldn't be  
16 able to --  
17 A. Oh, no, nothing would happen.  
18 Q. It'd be fried; you'd be out of luck.  
19 A. Well, I don't know whether you'd be out  
20 of luck or fried, but your batteries  
21 might run down if you have a short  
22 circuit.  
23 Q. So if the vessel -- if the motor, rather  
24 -- stalled out because of a short

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1 run out of gasoline in your car and it  
2 stalls.  
3 Q. Or you could have a problem with the fuel  
4 line and it would stall?  
5 A. Fuel pump, yes.  
6 Q. My idea of equipment is a fork, okay?  
7 That's my idea of machinery that I use.  
8 Obviously, this sounds obvious, but if  
9 the engine isn't getting fuel, it's going  
10 to stall out?  
11 A. Correct.  
12 Q. And that's if you don't put fuel in it?  
13 A. Correct.  
14 Q. If the fuel is somehow blocked from  
15 getting to the engine?  
16 A. Correct. You have a fuel filter. A fuel  
17 filter -- even an automobile has a fuel  
18 filter. Or, generally on a diesel  
19 engine, if the fuel filters are not  
20 changed, the engine will stop.  
21 If you get a clog in the line,  
22 the engine will stop. You run out of  
23 fuel, engines will stop. There are lots  
24 of reasons engines will stop. However,

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1 circuit, you wouldn't be able to get it  
2 going five minutes later, would you?  
3 A. Unless you pulled the wire away from  
4 where it shorted.  
5 Q. Save that, you wouldn't be able to get it  
6 going, right?  
7 A. No, it should not. If it shorts, it's  
8 going to stay that way.  
9 Q. So, not to beat this over the head, you  
10 don't know one way or the other whether  
11 there was an electronic problem that  
12 caused the skiff to stall?  
13 A. Electric or electronic, no.  
14 Q. And I've heard people say, and I think  
15 maybe Mr. Ramsey said it, but I'm not  
16 positive so I won't -- that he thought  
17 the engine needed air?  
18 A. No, I think he said it needed fuel. He  
19 squeezed the bulb.  
20 Q. Thanks. Okay, I didn't --  
21 A. And squeezing the bulb would force  
22 gasoline into the engine.  
23 Q. And an engine will stall, and --  
24 A. If you don't get any fuel to it. You can

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1 this one was doing it on a continual  
2 basis. We're not talking about just this  
3 one time. It was doing that days before,  
4 according to Mr. King.  
5 Q. Yeah, Mr. King's testimony was you kind  
6 of had to gun it or something. Didn't he  
7 say that?  
8 A. He indicated in order to change into  
9 reverse, you had to make certain that you  
10 kept the engine up to speed, as I  
11 remember feeling. You say, "gun it."  
12 All of this is indicative of an engine  
13 that's not in good repair. Something's  
14 wrong with it. It should have been taken  
15 out of service and repaired.  
16 Q. Okay. I just want to focus on this a  
17 little more then. If the idea of fuel  
18 needs to get to the engine to keep it  
19 running, that's separate from the  
20 electrical.  
21 A. Absolutely.  
22 Q. They're two different things.  
23 A. Surely.  
24 Q. So, if you've got a -- I think when I was



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1 like 18, I had a car that you had to keep  
2 giving it the gas or it would stall out.  
3 That's not an electrical problem?  
4 A. That's not an electrical problem.  
5 Q. That's a fuel pump problem?  
6 A. Or the engine is just not properly  
7 maintained, or the engine has rings and  
8 they're not seating properly. You don't  
9 have enough oil. Lots of things. But,  
10 it needed lots of gas in order to keep  
11 running. And you could have set the gas  
12 line -- that is, getting the fuel to the  
13 engine -- up a little higher and you  
14 wouldn't have to keep stomping on the  
15 starter.  
16 But again, that's indication to  
17 me of something that's in poor repair,  
18 poor condition for operation. And it's a  
19 hazard. All of a sudden you have an  
20 automobile that's going to stall on you  
21 someplace. Thankfully, you're still  
22 here.  
23 And the same thing with Mr.  
24 Ramsey. He had something that was not

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1 operating properly and should have been  
2 brought in for proper repair.  
3 Q. Mr. Ramsey's testimony that the engine  
4 wasn't getting enough fuel, does that  
5 lead you to think that it's more likely  
6 that it was a fuel issue than electrical?  
7 A. I don't know whether he said --  
8 MR. ROSENTHAL: Objection to  
9 form.  
10 A. -- it was not getting the fuel, or  
11 whether that's Mr. King who sort of  
12 suggests that it did not get fuel.  
13 Q. Wasn't Mr. Ramsey's testimony that he was  
14 squeezing the bulb?  
15 A. But, I think Mr. King was also saying you  
16 had to keep the speed up when you were  
17 changing into reverse.  
18 Q. Right, so put Mr. King aside. Mr.  
19 Ramsey's testimony was that he was --  
20 A. He was squeezing the bulb.  
21 Q. -- squeezing the bulb because he didn't  
22 think the engine was getting fuel.  
23 A. Right.  
24 Q. Does that lead you to believe that it's

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1 more likely -- and I understand your  
2 testimony; there's a problem with the  
3 engine. I'm just trying to narrow it  
4 down more.  
5 Does his testimony, the  
6 plaintiff's testimony, make it more  
7 likely in your opinion that the problem  
8 with the outboard motor was a fuel  
9 problem versus an electrical problem?  
10 A. Could have been, yes.  
11 MR. ROSENTHAL: Objection to the  
12 form.  
13 A. Yes, I mean, when you're not getting  
14 fuel, there's a problem with the fuel  
15 pump, fuel lines, fuel filter. I don't  
16 think running out of fuel is the problem.  
17 I'd like to believe that that's the first  
18 thing; they make certain they have enough  
19 fuel.  
20 Q. Right.  
21 A. So, something's wrong with the fuel line,  
22 carburation, whatever. Perhaps not  
23 changed out properly. I don't know the  
24 answer to that. But, that could have all

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1 been checked when they were having all  
2 these problems, and before April 5<sup>th</sup>. In  
3 other words from the time March 5<sup>th</sup>, I  
4 think when the sinking occurred, and was  
5 returned thereafter, to April 5<sup>th</sup>, there  
6 was enough time to figure out what to do  
7 with it; send it back to Hochstrasser and  
8 have them fix it.  
9 Q. You have also opined that the skiff was  
10 underpowered, --  
11 A. Yes.  
12 Q. -- for the swift current at the location.  
13 What do you base that opinion on?  
14 A. Well, firstly we have high currents.  
15 Let's get back to what he's talking about  
16 before. The question is, how high a  
17 current do we have? Well, if you start  
18 looking at currents that are anywhere  
19 from 6 to 8 to 12 knots, and when one  
20 starts talking about 12 knots, that is  
21 huge. Deep down, I never thought it was  
22 12 knots.  
23 But then to find out what it was  
24 since that's testimony and I had no



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1 better information, then -- when I say,  
2 "better information," off the top of my  
3 head or personal knowledge of Barnegat  
4 Bay -- I went to the Web to try and find  
5 out what conditions, current conditions  
6 might be there. I could get nowhere with  
7 that. I was not able to find anything.

8 So the next answer is, I go back  
9 to, "Let's find out from testimony."  
10 Testimony is 6, 8, 10, 12; big numbers.

11 And two, one goes to either Corp  
12 of Engineers or Coast Guard, and you see  
13 wind conditions and sea conditions.  
14 Someone talks in terms of 4 or 5 knots.  
15 Therefore, I assume that that may be  
16 someone who's testifying or filling out a  
17 Coast Guard and says that this is the  
18 number, 4 or 5 knots. And that starts to  
19 sound more reasonable.

20 So I then looked, and said,  
21 "Well, let's say 4 or 5 knots, and even 6  
22 knots." And what is that in terms of  
23 feet per minute? Well, 6 knots is about  
24 10 feet per minute. And knowing the

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1 to port, because his port side went under  
2 the rake of the barge. And once his port  
3 side got caught on the rake of the barge,  
4 he had no power in his vessel. The  
5 vessel was doomed, as I would say. The  
6 river, I mean the currents, pushed the  
7 starboard side down and flooded the boat.  
8 And at that point he decided to take his  
9 big leap, and he safely got over to a  
10 tire.

11 If he did not get over to the  
12 tire, I think we might not have a case,  
13 this kind of a case. We might have a  
14 death case, because he could have been  
15 brought underneath the rake of the barge,  
16 and we might not hear from Mr. Ramsey  
17 again.

18 So, he was one lucky maritime  
19 type that he made his escape.

20 Q. Now, some of that deals with after the  
21 vessel had stalled.

22 A. Oh, yes.

23 Q. But, your opinion is that even without  
24 the vessel stalling out, the motor's too

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1 speed, that is the velocity, knowing  
2 something about the size of the vessel, I  
3 can determine something about forces,  
4 current forces, pushing on the vessel.

5 And there are little formulas for  
6 doing that, but you can come out with  
7 somewhere around 1,000 pounds pushing on  
8 this vessel, if you have somewhere around  
9 10 feet per second, or 6 knots, pushing  
10 against the vessel.

11 And where would this be pushing  
12 on the vessel? Well, remember, this  
13 fellow is trying to back up against the  
14 current. When I say, "this fellow,"  
15 Ramsey.

16 Q. Right.

17 A. He was trying to back up and get away  
18 from the Wood 1 to bring the vessel  
19 alongside the Wood 1. And he's trying to  
20 back up into this current, and you just  
21 don't have enough power to back this boat  
22 into the current. And what happened, he  
23 got pushed around and pushed around to  
24 starboard, and pushed around -- sorry --

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1 small?

2 A. Yes, the motor's too small to work in  
3 that current. Now, you can work,  
4 obviously, if it's slack current. In  
5 other words, slack tide, no current, you  
6 can operate this vessel. There's no  
7 problem with that at all. It's when you  
8 try to back up against something that's a  
9 large current, then you have problems.

10 And I use the same analogy, or  
11 the same type engineering approach or  
12 analysis on the Mississippi River, or  
13 rivers where there's current. A towboat  
14 coming down river, in my opinion, has to  
15 have the ability to stop his tow, and  
16 hold his position. Stopping a tow and  
17 holding a position means that basically  
18 you have to be in a position to back up.  
19 When I say, "back up," to hold your  
20 position against the river current.

21 And I've done these calculations  
22 before in determining whether vessels are  
23 underpowered or not. And I'm using the  
24 same analogy here. You have a vessel

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<p style="text-align: right;">57</p> <p>1 that's being caught with a current coming</p> <p>2 against its stern. Can it back up</p> <p>3 against the current? And I find that it</p> <p>4 cannot.</p> <p>5Q. So, how exactly do you go about making</p> <p>6 the calculation? Is there a book</p> <p>7 somewhere that tells you?</p> <p>8A. Engineering first principles. You have</p> <p>9 to know something about the size of the</p> <p>10 stern. And if one assumes that somewhere</p> <p>11 around 5 feet wide and 2 feet deep, you</p> <p>12 have 10 square feet.</p> <p>13 And you have the speed of the</p> <p>14 current. And there's some little formula</p> <p>15 that gives you the force, --</p> <p>16Q. Do you know the formula off the top of</p> <p>17 your head?</p> <p>18A. Sure. Some coefficient times 1.99 over</p> <p>19 two.</p> <p>20Q. Why 1.99?</p> <p>21A. You take the weight of salt water, which</p> <p>22 is 64 pounds per cubic foot, and divide</p> <p>23 it by gravity, 32.2, and you come out</p> <p>24 with 1.99.</p>	<p style="text-align: right;">58</p> <p>1Q. Uh-huh.</p> <p>2A. So, 1.99 -- which is engineering terms,</p> <p>3 ROW -- ROW over 2, area times velocity</p> <p>4 squared. Force equals some coefficient.</p> <p>5 ROW over 2, area times velocity squared,</p> <p>6 that will give you a force.</p> <p>7 So, if we look at this -- and</p> <p>8 this gives you a force in pounds.</p> <p>9Q. And you've got to go slow for me. The</p> <p>10 force that we're talking about is the</p> <p>11 force of the current?</p> <p>12A. Force of the current on the stern of the</p> <p>13 vessel.</p> <p>14Q. Okay.</p> <p>15A. Force of the current on the stern of the</p> <p>16 vessel, some coefficient, ROW over 2. ROW</p> <p>17 being 1.99, which is 64 pounds of cubic</p> <p>18 foot salt water. Remember, fresh water</p> <p>19 is 62.4; salt water is about 1.28 times</p> <p>20 heavy; 64 pounds per cubic foot, feet,</p> <p>21 and divided by 32. The area, 5 by 2,</p> <p>22 makes it real easy; 10 square feet on the</p> <p>23 stern of the vessel.</p> <p>24 And then the velocity --</p>
<p style="text-align: right;">59</p> <p>1 remember, we talked about 6 knots. Six</p> <p>2 knots equates to 10 feet per second,</p> <p>3 roughly. Multiply 6 times 1.69, and you</p> <p>4 come out with about 10 feet per second.</p> <p>5 And 10 by 10 by 10, three tens,</p> <p>6 area, velocity squared; it's about 1,000</p> <p>7 times 1.99 over 2; it's about a one. And</p> <p>8 the coefficient, easy one to use is one.</p> <p>9 You can get above one, or you can get</p> <p>10 below one, depending upon the exact shape</p> <p>11 of the transom. I don't know what that</p> <p>12 is.</p> <p>13 So, for good numbers, the force</p> <p>14 is about 1,000 pounds. A thousand pounds</p> <p>15 pushing on the stern of the vessel. And</p> <p>16 a 40 horsepower motor cannot produce</p> <p>17 1,000 in reverse.</p> <p>18Q. How do you determine the amount of force</p> <p>19 that the motor can --</p> <p>20A. Well, I have to use again, little</p> <p>21 analogies. I know what it is on tugs.</p> <p>22 Big numbers on tugs, 25 pounds per</p> <p>23 horsepower; big numbers. Remember, big</p> <p>24 propellers.</p>	<p style="text-align: right;">60</p> <p>1Q. Right.</p> <p>2A. And this is a little propeller. And it's</p> <p>3 not built, really, for thrusting. It's</p> <p>4 built for something else, generally a</p> <p>5 higher speed operation. So, I would say</p> <p>6 under any circumstances, we're not going</p> <p>7 to get more than 20 pounds of horsepower</p> <p>8 out of it.</p> <p>9Q. Is there a way that you can determine</p> <p>10 specifically -- is force the right term?</p> <p>11A. Yeah, force.</p> <p>12Q. That the engine's capable of providing?</p> <p>13A. Sure. I need to know something about the</p> <p>14 propeller --</p> <p>15Q. Does the manufacturer provide that kind</p> <p>16 of --</p> <p>17A. No, I'd have to know more about the</p> <p>18 engine and the propeller. And I don't</p> <p>19 know that.</p> <p>20Q. Okay.</p> <p>21A. If I saw the engine and the propeller, I</p> <p>22 could do a calculation on it. I don't</p> <p>23 have the engine. I don't know the size</p> <p>24 of the propeller. I don't know who could</p>

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1 give me that.

2 Q. And these aren't things that the

3 manufacturer just puts out?

4 A. Yeah, but I'd have to know something

5 about what propeller was on that vessel

6 -- that particular engine. I don't know

7 that. All I'd need to do is see the

8 engine. I could do a calculation on all

9 this. But, it doesn't make any

10 difference. All I'd have to do is find

11 out whether or not this engine is capable

12 of pushing or pulling this engine --

13 vessel -- against 1,000 pounds.

14 We're dealing with something

15 going in the reverse. And engines are

16 not as efficient when going in reverse,

17 compared to going forward. So, there's

18 no way, in my opinion, that this little

19 40 horsepower engine is going to produce

20 1,000 thrust.

21 So, I therefore say it's

22 incapable of maneuvering that little boat

23 under those conditions.

24 Q. Let me just go through this slowly,

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1 measured it.

2 Q. Right. And we don't know the

3 configuration of the stern, specifically.

4 A. Right. I have photographs of the stern,

5 but nothing specific.

6 Q. I mean, if you went down there you'd do

7 measurements first?

8 A. I would find out what the draft of the

9 vessel is, yes.

10 Q. Okay, and just for a lay juror or a judge

11 that may be reading this, can you tell us

12 what the draft is?

13 A. Yeah, I have to calculate testimony that

14 the draft is 2 to 2 1/2 feet. And the

15 freeboard is a foot.

16 Q. So we can define our terms, draft is?

17 A. Distance from the water line down to the

18 bottom of the vessel.

19 Q. And the freeboard is?

20 A. The water line to the side of the vessel

21 rail, the rail. So we add them both

22 together, and we come out with 3 and 3

23 1/2 feet. And I think that comes from

24 Mr. Ramsey's statement right after the

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1 because I want to understand it.

2 A. Sure.

3 Q. If the vessel's capable of backing up --

4 and I think you said before that it got

5 pushed around. But, if it's capable of

6 backing up into the current, isn't it by

7 definition exerting more force than the

8 force that's being exerted against it?

9 A. Absolutely, sure.

10 Q. And if your calculation was that it was

11 1,000 pounds against it, but it's able to

12 back up into the current, then the motor

13 is producing 1,000 pounds?

14 A. Sure, yes. Or my 1,000 pound calculation

15 is in error, or the current force is in

16 error.

17 Q. Okay, all these variables.

18 A. Sure. Exactly.

19 Q. And we don't know what any of these

20 variables are for the purposes of our

21 discussion right here, do we? We don't

22 know the current.

23 A. Well, I have some indication of what the

24 current is. No one went down and

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1 casualty. In fact, let me pull that out

2 and make certain my memory is not failing

3 me. [Looking through documents.] No,

4 sorry about that. She draws 2 1/2 to 3

5 feet of water.

6 So, 2 1/2 and it has a freeboard

7 of 1 foot. So, 2 1/2 to 3 feet makes it

8 3 1/2 to 4 feet on the side.

9 Q. Okay.

10 A. So, when I say 10 square feet at the

11 stern, it actually could be larger than

12 10 square feet. When I say 10, 5 feet by

13 2 feet, it could actually be 5 feet by 3

14 feet, which is 15 square feet.

15 Q. Let me ask you to pin down for me what

16 role you think the fact that the engine

17 may have been undersized had to do with

18 causing the casualty. Because he was

19 certainly able to back up -- well, let me

20 not put words in your mouth --

21 A. No, he wasn't able to back up.

22 Q. Tell me, tell me.

23 A. Because he got broadsided. In other

24 words, his port side got into the rake.

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<p style="text-align: right;">65</p> <p>1 He wasn't able to back out.</p> <p>2Q. Well, is it your understanding that the</p> <p>3 motor hadn't stalled at that point?</p> <p>4A. When the motor stalled, I don't know.</p> <p>5 But, in any event, all I know is he got</p> <p>6 port side, --</p> <p>7Q. No, no, but if he's --</p> <p>8A. He's trying to get back out. And I think</p> <p>9 his testimony is, his bow is to the stern</p> <p>10 of the barge, that is, the dredge.</p> <p>11Q. Uh-huh.</p> <p>12A. And that's all I hear. And I don't hear</p> <p>13 that he got away from it, that he</p> <p>14 actually backed out.</p> <p>15Q. This is right before it sunk, you mean?</p> <p>16A. Yes, yeah. Let's go through the</p> <p>17 testimony again.</p> <p>18Q. Okay, go ahead.</p> <p>19A. He comes in and he actually floats in,</p> <p>20 originally. Remember, the current is</p> <p>21 bringing him in.</p> <p>22Q. That's right.</p> <p>23A. They give him a line, and he ties up at</p> <p>24 that point.</p>	<p style="text-align: right;">66</p> <p>1Q. Right.</p> <p>2A. And at that point, depending upon which</p> <p>3 story -- somebody says, "Get around to</p> <p>4 the other side," and someone says, "Well,</p> <p>5 I never said that." But, in any event,</p> <p>6 he decides to get the thing started</p> <p>7 again, to bring it around to the other</p> <p>8 side. And he's fooling around with it a</p> <p>9 little bit. And someone else was helping</p> <p>10 him. And then they left and he fooled</p> <p>11 around with it a little bit more. And he</p> <p>12 finally got it started. And at that</p> <p>13 point, he wanted to back out. And</p> <p>14 remember, a couple of wires are crossing.</p> <p>15 He has to back out.</p> <p>16 And I don't know at what point,</p> <p>17 but he says he got the vessel turned</p> <p>18 around such that his bow is facing the</p> <p>19 stern of the dredge.</p> <p>20Q. Where he's leaving from, right?</p> <p>21A. Right. And at that point, something</p> <p>22 happens and he swings around to port and</p> <p>23 gets trapped under the rake of the other</p> <p>24 barge.</p>
<p style="text-align: right;">67</p> <p>1Q. Okay.</p> <p>2A. And I don't know how far he got away.</p> <p>3Q. Let me ask you this question -- continue.</p> <p>4A. As soon as he got trapped, that's the end</p> <p>5 of the story.</p> <p>6Q. Okay, and the engine being undersized</p> <p>7 goes to him not being able to get away</p> <p>8 from the rake --</p> <p>9A. Right, right.</p> <p>10Q. -- of the other barge?</p> <p>11A. Right, or do any maneuvering with it.</p> <p>12Q. Okay, if we assume, hypothetically, that</p> <p>13 the engine had stalled prior to him</p> <p>14 impacting the rake of the other barge, --</p> <p>15A. The first time or the second time, now?</p> <p>16 Did he get away or not get away?</p> <p>17Q. Well, we know he didn't get away, right?</p> <p>18A. Right, we know he didn't get away.</p> <p>19Q. And the boat, the skiff, started to</p> <p>20 capsize.</p> <p>21A. No, it twisted around. Remember, he's</p> <p>22 headed -- the bow of his vessel is pushed</p> <p>23 against the stern of the dredge. And</p> <p>24 then it swings around such that his port</p>	<p style="text-align: right;">68</p> <p>1 side goes under the rake of the other</p> <p>2 barge. It rotates.</p> <p>3Q. Okay.</p> <p>4A. And then the --</p> <p>5Q. Well, let's --</p> <p>6A. -- forces of current pushed the starboard</p> <p>7 side down, his port side goes up the</p> <p>8 rake.</p> <p>9Q. And you mentioned he couldn't get away</p> <p>10 from the rake of the barge.</p> <p>11A. Right.</p> <p>12Q. If we assume at the point that the skiff</p> <p>13 impacted the rake of the barge, if we</p> <p>14 assume that the motor had stalled at that</p> <p>15 point, whether or not it's undersized had</p> <p>16 nothing to do with this incident.</p> <p>17A. No.</p> <p>18Q. I just want to make sure there's no</p> <p>19 other --</p> <p>20A. Once he stalled and he couldn't get it</p> <p>21 started again, he's trapped.</p> <p>22Q. Okay.</p> <p>23A. And even if he got it started again, I</p> <p>24 don't think he could have gotten away</p>



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1 from the rake. He was caught under that.  
2 Q. Have you formed any other opinions that  
3 you intend to testify to that aren't  
4 contained in this report?  
5 A. There's another one that I picked up.  
6 And it has to do with the lack of radio  
7 communication. And that comes about in  
8 the statement, page 17, "Where there any  
9 problems with the radio?" And he says,  
10 "Yeah, the radios were not working. We  
11 couldn't contact each other. The only  
12 radio that worked was my own personal  
13 handheld radio." In this day of modern  
14 communications, just about everyone --  
15 and certainly on the river, and I'd like  
16 to believe on these construction jobs --  
17 has a radio so that they can talk to each  
18 other.  
19 Q. A handheld radio?  
20 A. Handheld radio. And he's just indicating  
21 they weren't working.  
22 Q. These are the handheld radios?  
23 A. I assume, or one can assume that.  
24 Q. Most skiffs and outboard motors don't

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1 A. And then we have something with the  
2 vessel being unseaworthy because it's  
3 underpowered for operating in those  
4 environmental conditions.  
5 Q. It's fair to say that a well-maintained  
6 engine can stall under certain  
7 circumstances?  
8 A. Sure, you run out of fuel.  
9 Q. Other reasons, too? I mean, we've all  
10 broken down in our cars, and --  
11 A. Yeah, but a lot of the breaking down in  
12 cars has to do with lack of maintenance,  
13 for example. If a fuel filter is torn,  
14 that's a lack of maintenance.  
15 Q. Okay, you maintain your car well? I  
16 trust you do? Give yourself an A for car  
17 maintenance? Have you ever broken down?  
18 A. No, not since I've been 17, --  
19 Q. Really?  
20 A. -- when I ran out of fuel. Never again  
21 did I ever run out of fuel. My car has  
22 never stalled. I don't have that  
23 personal experience, except when I was 17  
24 and ran out of fuel. Never again.

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1 have -- the skiff that we're talking  
2 about, most of them aren't equipped with  
3 radios.  
4 A. Oh, no, no. It would be something you  
5 hand held or put on your belt, or  
6 something.  
7 Q. You're not a radio expert?  
8 A. No, all I say is that in my opinion when  
9 you're working on these commercial  
10 ventures, everyone stays in contact with  
11 everyone else.  
12 Q. Do you have any understanding that a lack  
13 of a radio caused or contributed to the  
14 incident?  
15 A. No, I'm just saying that these were all  
16 surrounding -- is there a contribution?  
17 Possibly somewhere, due to lack of  
18 communication. But outside of that, I  
19 don't know what to say about it. It's  
20 basically stalling, in other words, the  
21 vessel having an engine that's  
22 unseaworthy, or the vessel's unseaworthy  
23 because of a lack of a proper engine.  
24 Q. Okay, now --

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1 Q. But you accept as a general proposition,  
2 don't you, that a person who regularly  
3 takes their car in, by the book, for  
4 maintenance, can still run into a  
5 problem?  
6 A. Oh, absolutely you can run into a  
7 problem. I know, personal experience in  
8 my family, that these fan belts fail.  
9 Actually, it was a timing belt on a  
10 foreign car. And they're supposed to be  
11 changed at 75,000 miles. At 30,000  
12 miles, this thing broke on the road, and  
13 the engine just stopped on a thruway. We  
14 did not buy foreign cars of that  
15 manufacturer thereafter.  
16 But, in any event, yes, certainly  
17 it can happen. But, remember, that gave  
18 no warning or anything else. This  
19 [indicating] gave warning. People knew  
20 about the problem before it actually led  
21 to a serious accident. This breaking of  
22 a timing belt gave no warning,  
23 absolutely. And the manufacturer said,  
24 "Don't worry about it until you get



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<p>1 70,000 miles on it." 73</p> <p>2 This is not that situation. This</p> <p>3 is a situation where it's open and</p> <p>4 obvious there's a problem. Fix it.</p> <p>5 Q. Have you formed any other opinions? And,</p> <p>6 you know, I just don't want to be</p> <p>7 surprised.</p> <p>8 A. No, I don't intend -- I try to write</p> <p>9 everything in my report the first time.</p> <p>10 Q. I appreciate that.</p> <p>11 A. And give full disclosure and use my file.</p> <p>12 And I think it's relatively simple what's</p> <p>13 going on here; improper repair and</p> <p>14 operating a vessel with this engine in</p> <p>15 swift currents of the Barnegat Bay Inlet.</p> <p>16 And knowing about the problem with the</p> <p>17 engine, and not doing anything about it,</p> <p>18 and then having an undersized engine for</p> <p>19 this particular boat.</p> <p>20 And that's the story here. The</p> <p>21 little thing about the radio, it's just</p> <p>22 another thing that was not operating</p> <p>23 properly that adds to the unseaworthiness</p> <p>24 condition that existed on this vessel.</p>	<p>1 But did that cause the actual 74</p> <p>2 casualty, or contribute to it? Perhaps</p> <p>3 in a minor matter.</p> <p>4 Q. Have you been asked to form any further</p> <p>5 opinions? Do you anticipate --</p> <p>6 A. Well, I haven't read any of the log</p> <p>7 books, nor the massive documents that</p> <p>8 were provided this morning. I don't know</p> <p>9 whether there's anything in those or not.</p> <p>10 But, I have not reviewed them.</p> <p>11 Q. So, it's fair to say as you sit here</p> <p>12 right now, no one's asked you --</p> <p>13 A. No one's asked me to do anything further,</p> <p>14 except, I think, certainly Mr. Rosenthal</p> <p>15 was talking to me in terms of reviewing</p> <p>16 the log books.</p> <p>17 Q. Okay.</p> <p>18 A. But, I am not interested in reviewing</p> <p>19 financial records or things like that,</p> <p>20 which I understand were also provided.</p> <p>21 MR. ROSENTHAL: Not many.</p> <p>22 THE WITNESS: Oh.</p> <p>23 MR. ROSENTHAL: I mean,</p> <p>24 basically, it's the labor log and the log</p>
<p>1 book. 75</p> <p>2 Q. I think we're winding down. Is there</p> <p>3 anything you want to add or you think we</p> <p>4 ought to know?</p> <p>5 A. I try to keep it simple; no.</p> <p>6 MR. MURPHY: I'm just going to</p> <p>7 take one second to check on something out</p> <p>8 there.</p> <p>9 MR. ROSENTHAL: Sure.</p> <p>10 MR. MURPHY: I'll be right back.</p> <p>11 (Recess 10:25 a.m. - 10:30 a.m.)</p> <p>12 Q. You're testifying in this case as a naval</p> <p>13 architect.</p> <p>14 A. Correct.</p> <p>15 Q. And I understand your previous testimony</p> <p>16 that you're a designer of vessels and</p> <p>17 that sort of thing.</p> <p>18 A. Yes.</p> <p>19 Q. I want to hone in more on your experience</p> <p>20 with outboard motors. As a naval</p> <p>21 architect, you don't design outboard</p> <p>22 motors, do you?</p> <p>23 A. I do not design outboard motors.</p> <p>24 Q. And have you ever worked in the</p>	<p>1 maintenance and repair of outboard 76</p> <p>2 motors?</p> <p>3 A. Only my own outboard motors.</p> <p>4 Q. So you've never done that professionally?</p> <p>5 A. No.</p> <p>6 Q. And do you have any training regarding</p> <p>7 the maintenance and repair of outboard</p> <p>8 motors?</p> <p>9 A. Only to the extent that I'm involved with</p> <p>10 them in other cases, and one has to be</p> <p>11 familiar with the particular outboard</p> <p>12 motor. At that point, it's generally</p> <p>13 investigating the motor by seeing it,</p> <p>14 hands-on with the motor, taking things</p> <p>15 apart on the motor, having the</p> <p>16 manufacturer's instructions on the motor</p> <p>17 and maintenance on the motor.</p> <p>18 Q. You mention that you've owned outboard</p> <p>19 motors.</p> <p>20 A. Oh, yeah.</p> <p>21 Q. What's that history?</p> <p>22 A. Well, Evinrudes, I've had when I was</p> <p>23 younger. I don't have them right now.</p> <p>24 Q. How many, when?</p>

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1A. Oh, I've had Evinrudes. And the most recent one was a Yamaha. But, those were small boats. I don't have big outboard motors.

5Q. And would you do the work on the engine yourself?

7A. Absolutely.

8Q. And that's okay? It's reasonable to do your own work if you know what you're doing?

11A. That's my background, engineering. I'm a fiddler.

13Q. You're not a navigational expert, I trust?

15A. Well, let's broaden what you mean by navigation. When I was in the Navy I was a qualified deck watch officer. So, I have a navigational background on vessels. I've owned vessels. And I say, "vessels," -- sailboats, power boats.

21Q. I guess I've owned them too. I wouldn't testify in court as an expert at that, so I'm just trying to --

24A. No, I realize that, "Shoemaker, stick to

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1 your last." If a navigational expert were required, I think I would suggest to Mr. Rosenthal that he hire someone who is a navigational expert.

5Q. Okay.

6A. I don't think navigation by itself is involved in this case.

8Q. Okay, I'm just -- what about operation of outboards? And I understand you've done it with your own.

11A. Yes.

12Q. But, if this was a case limited to the operation of an outboard, would you give Mr. Rosenthal similar advice?

15A. I think you have to get down to case by case. He has his expert. Mr. Ramsey has done far more operation of an outboard than I have.

19Q. Okay, so you don't intend to testify in this case as an operational expert?

21A. Only to the extent that this little horsepower, or smaller horsepower, is not suitable for a vessel of this size, under those current conditions.

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1Q. So, based on those equations --

2A. If you call that --

3Q. No, to me, that's naval architect --

4A. Well, that's basically navigation. Maneuvering of vessels, that's naval architecture. Operation of vessels; I'm an operator, but don't ask me to testify. I'm not the one who does the operation of a vessel for a living.

10Q. Okay, so as far as the operation, the maintenance, and the repair of the motor, you've got familiarity with that, but --

13A. Well, maintenance, perhaps.

14Q. How so?

15A. Well, you have to follow some maintenance guides in order to keep your engine in proper operating order. And if it's not done, something goes awry.

19Q. But, let me just stop you there. Your expertises in naval architect don't really -- all of us who drive cars understand that you have to maintain equipment.

24A. Yeah, I'm sure. I think that what I'm

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1 saying is -- I wouldn't say common knowledge, but most people recognize it. The Judge would recognize that. He doesn't need --

5Q. And the jury?

6A. Probably the jury, too. They don't need someone to tell them that you have to maintain your vessel, or maintain your engine. When it's not operating, you take it to the service station.

11 And in this particular case, it was not operating for some period of time, perhaps a month before, and no one took it to the service station.

15Q. Okay, but that doesn't particularly get into the naval architecture realm, does it?

18A. No, no.

19Q. You're saying that based on your owning boats and that sort of thing?

21A. Yeah, and I think it's universal knowledge. Mechanical things, when they don't operate, you fix them. Or when they don't operate satisfactorily, you

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<p style="text-align: right;">81</p> <p>1 fix them. When they stall out all the</p> <p>2 time, you have them fixed.</p> <p>3Q. Have you removed anything from your file?</p> <p>4A. No.</p> <p>5Q. I notice there's no billing information,</p> <p>6 or there's only one.</p> <p>7A. I haven't billed them.</p> <p>8Q. It's time.</p> <p>9A. Yeah, well, Katrina came up to stop a lot</p> <p>10 of things in this world.</p> <p>11Q. I understand. And the rates that you're</p> <p>12 billing them? Is that an hourly rate as</p> <p>13 reflected in the appendix?</p> <p>14A. Correct. I wouldn't have my billing</p> <p>15 information in here, anyway. That's</p> <p>16 separate. This is the job file, not the</p> <p>17 billing file.</p> <p>18Q. And what about other correspondence with</p> <p>19 the firm?</p> <p>20A. There is none. You have everything here.</p> <p>21Q. Well, was there a letter retaining you?</p> <p>22A. No, no letter retaining me.</p> <p>23Q. All done over the phone?</p> <p>24A. All done over the phone.</p>	<p style="text-align: right;">82</p> <p>1Q. Okay.</p> <p>2A. I still work on a handshake.</p> <p>3Q. So, they've told you what the case is</p> <p>4 about, I trust, as well?</p> <p>5A. They told me what the case is all about.</p> <p>6 MR. MURPHY: Okay, I guess that's</p> <p>7 a wrap.</p> <p>8 MR. ROSENTHAL: I just have a</p> <p>9 couple of followup questions.</p> <p>10</p> <p>11 <u>EXAMINATION BY MR. ROSENTHAL:</u></p> <p>12Q. Is it your opinion that the undersized</p> <p>13 engine caused and contributed to Mr.</p> <p>14 Ramsey's accident?</p> <p>15A. Yes, it's a contributing factor.</p> <p>16Q. And can you explain your opinion?</p> <p>17A. Yes. If, for example, he had something</p> <p>18 that was able to operate under the swift</p> <p>19 current, and once the engine was</p> <p>20 operating, he would have been able to get</p> <p>21 away from underneath the stern of the</p> <p>22 dredge. He would have been able to back</p> <p>23 away and then go forward and get out. As</p> <p>24 long as the engine was still going and</p>
<p style="text-align: right;">83</p> <p>1 not stalled.</p> <p>2 Since it contributes, how much it</p> <p>3 contributes, I don't know.</p> <p>4Q. Is it your opinion that Mr. Ramsey in any</p> <p>5 way caused his accident?</p> <p>6A. No, he --</p> <p>7 MR. MURPHY: I'm just going to</p> <p>8 object.</p> <p>9A. I think he was a victim being in a vessel</p> <p>10 that stalled out, and the swift current</p> <p>11 grabbed him and put him in the wrong</p> <p>12 place.</p> <p>13Q. Now, is it your opinion that the engine</p> <p>14 was not properly maintained?</p> <p>15A. Yes.</p> <p>16 MR. MURPHY: Objection.</p> <p>17A. As soon as it came back and someone found</p> <p>18 out that it was stalling out, they should</p> <p>19 have sent it back and said, "Fix it."</p> <p>20 And Hochstrasser would have said, "Well,</p> <p>21 I told you what to do. You had to change</p> <p>22 this, this, and this. And if you'd done</p> <p>23 that and we tested it again we'd find out</p> <p>24 what was wrong with it and we'd send you</p>	<p style="text-align: right;">84</p> <p>1 back a vessel that we would give our</p> <p>2 90-day, or six-month, or a year warranty</p> <p>3 on it."</p> <p>4Q. And what is that opinion on the</p> <p>5 maintenance of the engine?</p> <p>6A. Well, it stalled out. And then we go</p> <p>7 back to Hochstrasser's invoice that says</p> <p>8 that we recommended that you do this,</p> <p>9 this, and this, and you didn't do it.</p> <p>10 And I think, really, what that's</p> <p>11 all about is Hochstrasser saying, "Look,</p> <p>12 if you have problems, don't come back to</p> <p>13 me. I'm not going to warrant your</p> <p>14 vessel, that is, your engine suitable for</p> <p>15 your vessel, because you didn't do what</p> <p>16 I'm suggesting."</p> <p>17Q. Like a cover your ass sort of a --</p> <p>18A. I think so.</p> <p>19Q. Mr. Murphy was asking you questions about</p> <p>20 your experience in the area of vessel</p> <p>21 maintenance. What is your experience in</p> <p>22 that area?</p> <p>23A. Well, I'm not a fellow who works in a</p> <p>24 repair shop. And if something is wrong,</p>

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1 I tell someone, "Go out and see your  
2 repairman, he'll take care of it for  
3 you."  
4 Q. Can you repair your own vessel, your own  
5 engine?  
6 A. Sure, an outboard I can.  
7 Q. Okay, so you have experience repairing  
8 your own outboard engine?  
9 A. Yes, but all of a sudden you get into  
10 large engines, and they become a little  
11 bit more complicated because they're now  
12 all electronically fired, all  
13 electronically controlled. And similar  
14 to trying to repair your own automobile  
15 engine any longer, unless you know the,  
16 quote, codes, to get in and provide  
17 diagnostic information, you have a rough  
18 time of doing repairs on modern engines.  
19 Q. Okay, this engine was a 40 horsepower  
20 engine. Would you consider that to be a  
21 large engine?  
22 A. No.  
23 Q. Is that the sort of engine that you had  
24 worked on previously?

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1 revved up like I had just thrown it in  
2 neutral, but I didn't. It was still in  
3 reverse. But, it was running and the  
4 propeller wasn't going."  
5 What do you think could have  
6 caused that?  
7 A. It either got thrown in neutral or some  
8 keyweigh broke. And when I say,  
9 "keyweigh," if we go back to  
10 Hochstrasser, you'll see that -- when I  
11 say, "keyweigh," a key broke. In their  
12 April 4<sup>th</sup>, -- I'm sorry, April 6<sup>th</sup> invoice  
13 -- or repair order; I shouldn't say,  
14 "invoice," -- they talk about replacing  
15 keyweigh key.  
16 And that indicates a key broke.  
17 I don't know where this key is. But,  
18 something broke, and that would possibly  
19 keep the propeller from turning.  
20 Q. What could cause a key to break?  
21 A. Some large forces that can develop on a  
22 shaft. For example, if the propeller hit  
23 the cable, the wire, the mooring wire, it  
24 could break a key.

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1A. Oh, yeah, surely.  
2 Q. So, you've had experience working on 40  
3 horsepower engines?  
4 A. Sure.  
5 Q. Are the engines that you have at your  
6 home 40 horsepower?  
7 A. No, I've gotten rid of all those.  
8 Q. Why would that be?  
9 A. I have a different kind of vessel. I  
10 have one, a 19 foot sailboat that has  
11 like a 5 horsepower engine. And then I'm  
12 part owner of a 40 foot sailboat that has  
13 like a 90 horsepower, -- I guess maybe  
14 it's not 90 -- a 60 horsepower inboard  
15 diesel engine.  
16 Q. Now, Mr. Ramsey testified in his  
17 deposition about -- you read Mr. Ramsey's  
18 deposition, right?  
19 A. Correct.  
20 Q. He testified that he was backing the  
21 vessel -- and when I say, "the vessel,"  
22 -- he was backing the skiff out after he  
23 drifted to the dredge. And he was  
24 backing it out and he says, "The engine

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1 Q. And could an undersize engine cause a  
2 vessel to strike a mooring line?  
3 A. Only to the extent that the operator  
4 would not be able to maneuver away from  
5 the mooring line.  
6 Q. So it affects the operation of the  
7 vessel?  
8 A. Oh, yes. You can't turn. You can't  
9 speed. You can't accelerate as quickly.  
10 You can't maneuver as quickly with an  
11 underpowered vessel, a small horsepower  
12 vessel.  
13 MR. ROSENTHAL: That's all I  
14 have.  
15 MR. MURPHY: I'll just follow up  
16 on that, briefly.  
17  
18 EXAMINATION BY MR. MURPHY:  
19 Q. We talked before about some expert  
20 testimony you've given, either in  
21 depositions or in court. Have you ever  
22 testified as an expert, either in  
23 deposition, or in court, regarding the  
24 operation of an outboard motor?

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<p style="text-align: right;">89</p> <p>1A. I'm just thinking about the ones that 2 have been collision cases, and the ones 3 that have to do with people being thrown 4 out of the vessel, thrown out of the high 5 speed -- to that extent, yes. 6Q. Okay, but aside from that, no? 7A. Basically, maneuvering comes down to high 8 speed maneuvering where people are thrown 9 out and that's the casualty, someone's 10 hurt, not just someone -- yes, some other 11 cases. 12 You're all familiar with this 13 little inboard-powered personal 14 watercraft. You sit on these things and 15 go fast. 16Q. Uh-huh. 17A. And if you don't steer, or you take your 18 foot of the pedal, there's no power to 19 them, they keep going in the same 20 direction. And all of a sudden you have 21 some serious accidents with them. And 22 that's maneuvering, or trying to 23 maneuver, with lack of power, and lack of 24 power because you took your foot off the</p>	<p style="text-align: right;">90</p> <p>1 gas, and the impeller is no longer 2 turning. You don't have the pump 3 squirting out water. And you're trying 4 to maneuver and it doesn't maneuver. 5Q. Right, but with regard to outboard 6 motors? 7A. I just can't imagine, or can't think 8 right now where that particular situation 9 has come up. 10Q. And your testimony with these collisions 11 would be as a naval architect, -- 12A. Yes. 13Q. -- based on what? 14A. Maneuvering characteristics of vessels. 15 And that's those little personal 16 watercraft, how they maneuver. 17Q. So, it's fair to say that you've never 18 testified in court or at deposition 19 regarding maintenance of outboard motors? 20 You're not an outboard maintenance -- 21A. I understand you. 22Q. -- expert, are you? 23A. I don't think it's ever come up. 24Q. Okay, and what about the repair --</p>
<p style="text-align: right;">91</p> <p>1A. I'm talking about coming up in a 2 deposition or trial testimony. 3Q. So, it's fair to say you've never 4 testified in that capacity before? 5A. I don't believe so as in someone involved 6 with maintenance. 7Q. And it's also fair to say you don't 8 consider yourself an expert, if the issue 9 is strictly limited to maintenance of 10 outboard motors? 11A. Depends upon -- remember, my background 12 is design of things, engines. Not 13 outboards, but real engines that run 14 large ships. 15Q. Right. 16A. And from that standpoint, I get involved 17 a little bit with maintenance, but very 18 little. I'm more in design than 19 maintenance. 20Q. And as far as the repair of outboard 21 motors, you've said you never worked in 22 that capacity, but you've never testified 23 in -- 24A. Well, I --</p>	<p style="text-align: right;">92</p> <p>1Q. Let me just finish the question, please. 2 You've never testified in court or at 3 deposition as to repair of outboard 4 motors, have you? 5A. No, but my background is -- remember, I 6 worked many years with U.S. Salvage 7 Association, which is the technical arm 8 for the marine underwriters, where I'd go 9 out and see damages to vessels, and write 10 repair specifications to see that they 11 got back in good order. 12 However, at that time, I was not 13 involved, specifically, with outboards. 14 If they'd get dunked, submerged, I'd take 15 them to the shop and have them do them 16 over. 17 But, on large engines, you don't 18 take the engine out and send it to the 19 shop to do over. You'd repair as 20 necessary. You look at the bearings. 21 You look at the fuel injectors. You look 22 at the starters, that is, the air 23 starters, or electrical starters, and 24 determine each particular item that needs</p>



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1 repair on large engines. Compared with  
2 these engines, the engine, you know, a  
3 couple of thousand dollars, and you  
4 either can buy a new one or have it  
5 repaired for something less than that.  
6 Large engines, we're talking  
7 about hundreds of thousands of dollars.  
8 Q. And how long ago did you do that for the  
9 Salvage Association?  
10 A. I worked for the U.S. Salvage Association  
11 from 1958 to 1965; seven years.  
12 Q. And you mentioned you've owned some  
13 outboard motors. Have you ever owned one  
14 as big as 40 horsepower?  
15 A. Not specifically 40, something less than  
16 that.  
17 Q. How much less?  
18 A. Oh, 25.  
19 Q. And when did you last own --  
20 A. Oh, that goes back many years ago; 20  
21 years ago, 30 years ago, that size.  
22 Basically, I went into sailboats that had  
23 much smaller engines than that.  
24 Q. Okay, so basically you haven't repaired

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1 or maintained an outboard motor over 20  
2 horsepower in 20 years, anyway?  
3 A. That's correct. A little bit more than  
4 20 horsepower, but that's -- probably  
5 closer to 30.  
6 Q. Okay. The keyweigh. That's a term that  
7 came up that we hadn't talked about. And  
8 I understand that that's on the repair.  
9 Can you tell us, in a general sense, what  
10 the keyweigh is?  
11 A. Yes, it holds something onto a shaft.  
12 When I say, "*something*," it could hold a  
13 propeller onto a shaft. It could hold a  
14 gear onto the shaft.  
15 Q. And where's it located on the --  
16 A. I don't know. It just says, "*keyweigh*  
17 *key*." I don't know where it is. You'd  
18 have to find out from the engine  
19 manufacturer's part list. They have a  
20 number; you find out where it is on the  
21 engine.  
22 Q. And if the keyweigh breaks, can that  
23 cause the motor to stall?  
24 A. It could cause it to, possibly, because

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1 we might be talking about a timing gear.  
2 Q. This wouldn't be an electrical problem,  
3 would it?  
4 A. No, it would not be electrical. This is  
5 a mechanical problem.  
6 Q. But, it's a mechanical problem?  
7 A. Yeah.  
8 Q. And I think I cut you off. How would  
9 breaking the keyweigh cause the motor to  
10 possibly stall?  
11 A. I don't know what keyweigh this is and  
12 where the key is located and what's  
13 connected to it for gears, connected to  
14 it. It might affect the timing of the  
15 sparkplug, for example.  
16 Q. Okay.  
17 A. I just don't know where this is.  
18 Q. I'm just trying to get a general sense.  
19 And I understand your testimony.  
20 A. I just don't know.  
21 Q. And at least one way for a keyweigh to  
22 break is the prop striking an object,  
23 like a mooring wire?  
24 A. Correct.

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1 Q. If that's what happened in this case,  
2 hypothetically, that the vessel stalled  
3 because the prop hit the mooring wire,  
4 then the stalling in this case had  
5 nothing to do with the previous  
6 stallings; is that fair to say?  
7 A. It may or may not have anything to do  
8 with it.  
9 Q. You wouldn't know one way or the other?  
10 A. No. The vessel could have hit the wire  
11 because it stalled, or the vessel could  
12 have hit the wire because of lack of  
13 maneuverability caused by the small  
14 engine.  
15 Q. Or Mr. Ramsey may have driven it into the  
16 wire.  
17 A. Or Mr. Ramsey may have driven it into the  
18 wire.  
19 Q. And that could cause the keyweigh to  
20 break.  
21 A. It could, and the wire.  
22 Q. And that could cause the vessel to stall?  
23 A. Could cause the vessel to stall. That  
24 is, the engine to stall.

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<p style="text-align: right;">97</p> <p>1 Q. Right.</p> <p>2 MR. MURPHY: That's all.</p> <p>3</p> <p>4 <u>EXAMINATION BY MR. ROSENTHAL:</u></p> <p>5 Q. Are you an expert on the maneuvering</p> <p>6 characteristics of vessels?</p> <p>7 A. Yes, a naval architect becomes involved</p> <p>8 with maneuvering of vessels.</p> <p>9 Q. And that includes the characteristics in</p> <p>10 different current of water?</p> <p>11 A. Yes.</p> <p>12 Q. And with different types of engines?</p> <p>13 A. Yes.</p> <p>14 Q. Different horsepower engines?</p> <p>15 A. Yes.</p> <p>16 Q. And that is specifically your area of</p> <p>17 expertise?</p> <p>18 A. Yes.</p> <p>19 Q. And is it your opinion that this vessel</p> <p>20 should have been operating at all in this</p> <p>21 sort of a current, in a current of 6</p> <p>22 knots or above?</p> <p>23 A. No, in my opinion, this vessel, with this</p> <p>24 horsepower, this size vessel, should not</p>	<p style="text-align: right;">98</p> <p>1 have been operating in that current.</p> <p>2 Q. Ever?</p> <p>3 A. Ever.</p> <p>4 Q. Okay, thank you.</p> <p>5 MR. MURPHY: I wrote myself a</p> <p>6 note. I'm not trying to make this last</p> <p>7 all day.</p> <p>8</p> <p>9 <u>EXAMINATION BY MR. MURPHY:</u></p> <p>10 Q. Any requirements to being the operator of</p> <p>11 an outboard motor such as -- strike that</p> <p>12 -- the skiff, an outboard motor that</p> <p>13 we've been talking about?</p> <p>14 A. Not as far as I know.</p> <p>15 Q. Driver's license even? Could my</p> <p>16 7-year-old get in and legally operate?</p> <p>17 A. I don't know what happens in</p> <p>18 Massachusetts. In Louisiana, probably</p> <p>19 your 7-year-old could go out and operate</p> <p>20 a boat.</p> <p>21 Q. You guys are a little looser than we are</p> <p>22 here in heavily-regulated Massachusetts.</p> <p>23 A. Sportsmens' paradise.</p> <p>24 Q. I love New Orleans. But, you don't know</p>
<p style="text-align: right;">99</p> <p>1 if there's any requirements in New</p> <p>2 Jersey, where this was, or Massachusetts,</p> <p>3 for that matter, --</p> <p>4 A. No.</p> <p>5 Q. -- as far as -- what about a driver's</p> <p>6 license? Is that typically --</p> <p>7 A. Driver's license is something else; Motor</p> <p>8 Vehicle Bureau. That has nothing to do</p> <p>9 with boats. Boats are still --</p> <p>10 Q. Don't some boats, like the fishing boats,</p> <p>11 in order to be a captain you need a</p> <p>12 driver's license?</p> <p>13 A. Not as far as I know. Fishing vessels</p> <p>14 you don't. Up until a couple of years</p> <p>15 ago, you could do anything you wanted in</p> <p>16 the fishing industry. That was sort of</p> <p>17 protected. And there were no</p> <p>18 regulations, no Coast Guard regulations,</p> <p>19 pertaining to fishing vessels.</p> <p>20 You needed a couple of things.</p> <p>21 You needed running lights, for example.</p> <p>22 And you had to carry life-preservers.</p> <p>23 But, outside of that, you could do just</p> <p>24 about anything you want on a fishing</p>	<p style="text-align: right;">100</p> <p>1 vessel.</p> <p>2 Q. Any provision that you're aware of where</p> <p>3 if your driver's license is suspended or</p> <p>4 revoked, that it would be unlawful for</p> <p>5 you to operate a skiff like this?</p> <p>6 A. Absolutely not. Again, I'm talking about</p> <p>7 Louisiana. Federal law, no. State law,</p> <p>8 local, municipal law, may be different.</p> <p>9 But, I don't know of any. Massachusetts</p> <p>10 is always different.</p> <p>11 Q. Okay. Good. Thank you.</p> <p>12 (Whereupon the deposition concluded @ 11:00 a.m.)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

Steven Ramsey v. Jay Cashman, Inc.  
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C E R T I F I C A T E

1  
2 MIDDLESEX, SS

3 I, Elizabeth A. Hayes, a Massachusetts Court  
4 Reporter and Notary Public duly commissioned and  
5 qualified in and for the Commonwealth of  
6 Massachusetts, do hereby certify that there came  
7 before me on the 16<sup>th</sup> day of March, 2006, the  
8 person hereinbefore named who was by me duly  
9 sworn to testify to the truth and nothing but the  
10 truth of his knowledge touching and concerning  
11 the matters in controversy in this cause; that  
12 was thereupon examined upon his oath, and his  
13 examination reduced to transcript; and this is  
14 true record of the testimony given by the  
15 witness.

16 I further testify that I am neither attorney  
17 or counsel for, nor related to or employed by any  
18 of the parties hereto or financially interested  
19 in the action.

20 IN WITNESS WHEREOF, I have hereunto set my  
21 hand and notarial seal this 23<sup>rd</sup> day of March,  
22 2006.

23 Elizabeth A. Hayes  
24 Commission Expires: August 9, 2007

101

1 DEPONENT'S ERRATA SHEET AND SIGNATURE INSTRUCTIONS

102

2 The original of the Errata Sheet has been  
3 delivered to SAMUEL J. ROSENTHAL, ESQUIRE. When  
4 the Errata Sheet has been completed by the  
5 deponent and signed, the ORIGINAL should be sent  
6 to ROBERT J. MURPHY, JR., to whom the original  
7 transcript has been sent.

INSTRUCTIONS TO DEPONENT

8 After reading this volume of your deposition  
9 transcript, indicate any corrections or changes  
10 to your testimony below, and sign. **DO NOT** make  
11 marks or notations on the transcript volume  
12 itself. If more space is needed, please use the  
13 reverse of this sheet.

14 STEVEN RAMSEY v. JAY CASHMAN, INC.  
15 DEPOSITION OF ARTHUR C. SARGENT (March 16, 2006)

Page Number	Line Number	Deposition Reads	Should Read
16			
17			
18			
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23			
24			

16 I have read the foregoing transcript of my testimony,  
17 taken on March 16, 2006. Except for any corrections,  
18 or changes noted above, I hereby subscribe to the  
19 transcript as an accurate record of the statements  
20 made by me.

21  
22 Dated: \_\_\_\_\_

23 ARTHUR C. SARGENT

24